

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. AT&T COMMUNICATIONS OF THE MIDWEST, INC., Respondent.	DOCKET NO. FCU-03-35
--	----------------------

**ORDER DOCKETING FOR FORMAL PROCEEDING
AND REQUESTING STATUS REPORT**

(Issued January 20, 2004)

On May 7, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution issued in C-03-072, involving AT&T Communications of the Midwest, Inc. (AT&T), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On April 9, 2003, Ms. Yolanda Jacobo submitted a complaint to the Board alleging that her long distance telephone service was changed from MCI to AT&T without proper authorization. Board staff identified the matter as C-03-72 and, pursuant to Board rules, on April 11, 2003, forwarded the complaint to AT&T for response.

AT&T responded on April 22, 2003, stating that a sales agent for AT&T spoke to Mr. Felimon Jacobo regarding a change in long distance telephone service to AT&T. AT&T asserted that it received Mr. Jacobo's verbal consent to change long distance service through a third-party verification company. AT&T was unable to submit to the Board a copy of the third-party verification recording and rather submitted a written statement from the third-party verification company, EDS, which asserted that Mr. Jacobo completed the verification. AT&T further indicated that it removed the charges that were billed to the customer's account between January 30, and March 14, 2003, and that the customer's account was closed effective March 14, 2003.

On April 29, 2003, Board staff issued a proposed resolution describing these events and finding that AT&T did not file acceptable proof of authorization to switch the customer's long distance service to AT&T. The proposed resolution also provided that AT&T was to fully credit all charges to the Jacobos' account. No party other than Consumer Advocate has challenged the staff's proposed resolution.

In its May 7, 2003, petition, Consumer Advocate asserts that a civil penalty should be imposed against AT&T to deter future slamming violations.

On May 27, 2003, AT&T filed a response to Consumer Advocate's May 7, 2003, petition. In support of its response, AT&T asserted that while the third-party verification recording was lost, the affidavit from the third-party verification company demonstrated that a third-party verification did occur. AT&T stated that this affidavit is enough to satisfy the Board's rules requiring proof of verification. (199 IAC 6.8(2).) AT&T also stated that Ms. Jacobo's account has been fully credited for all AT&T long distance calls placed during the applicable time frame.

On June 10, 2003, Consumer Advocate filed a reply to AT&T's response asserting that AT&T failed to respond to all circumstances surrounding Ms. Jacobo's complaint and that a formal proceeding is appropriate.

The Board has reviewed the record to date and finds that there is sufficient information to warrant further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until February 23, 2004, and will request that the parties submit a report to the Board regarding the status of this matter on or before that date.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on May 7, 2003, identified as Docket No. FCU-03-35 is granted and docketed for formal proceeding.
2. The parties shall submit a status report to the Board on or before February 23, 2004.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of January, 2004.